

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

QUEEN AKHENATEN II MONTGOMERY	§	
BEY,	§	
PLAINTIFF,	§	
	§	
V.	§	CIVIL CASE NO. 3:24-CV-808-S-BK
	§	
PAMELA WHITFIELD,	§	
DEFENDANT.	§	

**FINDINGS, CONCLUSIONS AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE**

Pursuant to [28 U.S.C. § 636\(b\)](#) and *Special Order 3*, this *pro se* civil action was referred to the United States magistrate judge for case management, including the issuance of findings and a recommended disposition where appropriate. Upon review of the relevant pleadings and applicable law, this action should be **DISMISSED WITHOUT PREJUDICE** for lack of subject matter jurisdiction.

I. BACKGROUND

On April 3, 2024, Plaintiff Queen Akhenaten II Montgomery Bey, a Texas resident and self-proclaimed “Moorish American” national, filed a complaint against Pamela Whitfield. [Doc. 3 at 1](#). The complaint is inartfully pled, difficult to decipher and largely nonsensical. Bey complains of an eviction action before the Justice of the Peace Court. Bey asserts the judge erred in exercising “authority over me” and “the subject matter” and by “[d]iscriminating against my nationality by not recognizing my Moorish American nationality” and “my free appellation name.” [Doc. 3 at 1](#); [Doc. 3 at 12](#). In the attachments to the complaint and other documents, Bey references criminal statutes. [Doc. 3 at 2](#); [Doc. 6](#).

In the *Civil Cover Sheet*, Bey checks the box indicating diversity jurisdiction. [Doc. 3 at 12](#). Bey also checks the box “other personal injury” for the nature of suit and describes the cause of action as follows: “courts are constituted by authority and cannot act beyond the power delegated to them.” *Id.* Bey seeks \$1 million in damages. *Id.*

Upon review, the Court concludes that subject matter jurisdiction is lacking. Thus, this action should be dismissed *sua sponte*.

II. ANALYSIS

The Court should always examine, *sua sponte*, if necessary, the threshold question of whether it has subject matter jurisdiction. *The Lamar Co., L.L.C. v. Mississippi Transp. Comm'n*, 976 F.3d 524, 528 (5th Cir. 2020); FED. R. CIV. P. 12(h)(3) (“If the court determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the action.”). Unless otherwise provided by statute, a federal district court has subject-matter jurisdiction over (1) a federal question arising under the Constitution, a federal law, or a treaty, *see* 28 U.S.C. § 1331, or (2) a case in which there is complete diversity of citizenship between parties and the matter in controversy exceeds \$75,000, *see* 28 U.S.C. § 1332. “Under the well-pleaded complaint rule, ‘a federal court has original or removal jurisdiction only if a federal question appears on the face of the plaintiff’s well-pleaded complaint; generally, there is no federal jurisdiction if the plaintiff properly pleads only a state law cause of action.’” *Gutierrez v. Flores*, 543 F.3d 248, 251-52 (5th Cir. 2008). Further, the plaintiff, as the party asserting subject-matter jurisdiction, bears the burden of establishing that subject matter jurisdiction exists. *See Willoughby v. U.S. ex rel. U.S. Dep’t of the Army*, 730 F.3d 476, 479 (5th Cir. 2013).

The Court must also liberally construe pleadings filed by *pro se* litigants. *See Erickson v. Pardus*, 551 U.S. 89, 94 (2007) (noting *pro se* pleadings are “to be liberally construed” and “held

to less stringent standards than formal pleadings drafted by lawyers”); Cf. [FED. R. CIV. P. 8\(e\)](#) (“Pleadings must be construed so as to do justice.”). Even under the most liberal construction, however, Bey has not alleged facts that establish federal question jurisdiction.

“A federal question exists only [in] those cases in which a well-pleaded complaint establishes either that federal law creates the cause of action or that the plaintiff’s right to relief necessarily depends on resolution of a substantial question of federal law.” [Singh v. Duane Morris LLP](#), 538 F.3d 334, 337-38 (5th Cir. 2008) (citation and internal quotation marks omitted). Bey’s complaint, however, contains no factual allegations that support federal question jurisdiction. As noted, the complaint relates to an eviction dispute. And Bey’s fleeting mention of discrimination based on national origin is insufficient to invoke the Court’s federal question jurisdiction. See [Girard v. CitiMortgage, Inc.](#), No. 12-CV-4264-N, 2013 WL 5873297, at *2 (N.D. Tex. Nov. 1, 2013) (Godbey, J.) (adopting magistrate judge’s dismissal recommendation because plaintiff’s “single passing reference” to a federal statute did not constitute a cause of action, and was not “sufficient to support the exercise of federal question jurisdiction”).

Moreover, “federal courts are without power to entertain claims otherwise within their jurisdiction if they are so attenuated and unsubstantial as to be absolutely devoid of merit” [Hagans v. Levine](#), 415 U.S. 528, 536-37 (1974) (internal citation and quotation marks omitted); see [Murphy v. Inexco Oil Co.](#), 611 F.2d 570, 573 (5th Cir. 1980) (“[T]he assertion that the claim involves [a federal] question must be more than incantation.”).

Bey also references federal criminal statutes. [Doc. 3 at 2](#); [Doc. 6](#). To the extent Bey intends to file a criminal complaint alleging criminal law violations, the request lacks any legal basis and thus cannot support a federal cause of action. Criminal statutes do not create a private right of action. For a private right of action to exist under a criminal statute, there must be “a

statutory basis for inferring that a civil cause of action of some sort lay in favor of someone.”

Cort v. Ash, 422 U.S. 66, 79 (1975), *overruled in part by Touche Ross & Co. v. Redington*, 442 U.S. 560 (1979); *see Suter v. Artist M.*, 503 U.S. 347, 363 (1992) (concluding that the party seeking to imply a private right of action bears the burden to show that Congress intended to create one). Here, Bey has pled nothing that would even come close to meeting that burden. Moreover, “decisions whether to prosecute or file criminal charges are generally within the prosecutor’s discretion, and, as a private citizen, [the plaintiff] has no standing to institute a federal criminal prosecution and no power to enforce a criminal statute.” *Gill v. Texas*, 153 F. App’x 261, 262-63 (5th Cir. 2005).

Further, Bey’s scant complaint, including the assertion in the Civil Cover Sheet that the Defendant is located in Texas, apparently defeats subject-matter jurisdiction on the basis of diversity. *Doc. 3 at 12*. *See Corfield v. Dallas Glen Hills LP*, 355 F.3d 853, 857 (5th Cir. 2003) (finding district court cannot exercise diversity jurisdiction if the plaintiff shares the same state of citizenship as any one of the defendants) (citation omitted).

Finally, because the complaint does not present an adequate basis for federal question jurisdiction and Bey cannot rely on diversity jurisdiction, the Court cannot exercise supplemental jurisdiction over any possible state-law claims that Bey may be attempting to assert. 28 U.S.C. § 1367(a).

Accordingly, the complaint should be dismissed *sua sponte* and without prejudice for lack of subject matter jurisdiction.

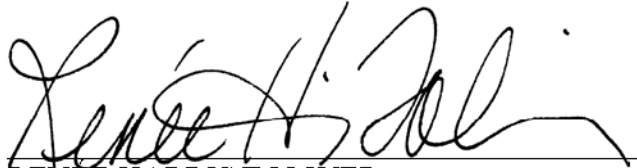
III. LEAVE TO AMEND

Ordinarily, *pro se* plaintiffs should be granted leave to amend their complaint before dismissal, but leave is not required when they have already pled their “best case.” *Brewster v. Dretke*, 587 F.3d 764, 767-68 (5th Cir. 2009). As demonstrated above, the facts as alleged in Bey’s complaint demonstrate a lack of subject matter jurisdiction in this Court that is not curable by amendment. Thus, granting leave to amend would be futile and cause needless delay.

IV. CONCLUSION

For all these reasons, Bey’s complaint should be **DISMISSED WITHOUT PREJUDICE** for lack of subject matter jurisdiction. *FED. R. CIV. P. 12(h)(3)*.

SO RECOMMENDED on April 8, 2024.



RENEE HARRIS TOLIVER
UNITED STATES MAGISTRATE JUDGE

INSTRUCTIONS FOR SERVICE AND NOTICE OF RIGHT TO APPEAL/OBJECT

A copy of this report and recommendation will be served on all parties in the manner provided by law. Any party who objects to any part of this report and recommendation must file specific written objections within 14 days after being served with a copy. *See 28 U.S.C. § 636(b)(1); FED. R. CIV. P. 72(b)*. An objection must identify the finding or recommendation to which objection is made, the basis for the objection, and the place in the magistrate judge’s report and recommendation the disputed determination is found. An objection that merely incorporates by reference or refers to the briefing before the magistrate judge is not specific. Failure to file specific written objections will bar the aggrieved party from appealing the factual findings and legal conclusions of the magistrate judge that are accepted or adopted by the district court, except upon grounds of plain error. *See Douglass v. United Servs. Auto. Ass’n*, 79 F.3d 1415, 1417 (5th Cir. 1996), *modified by statute on other grounds*, 28 U.S.C. § 636(b)(1) (extending the time to file objections to 14 days).